



Rules of Board of Ethics City of Atlanta

Rule 1. Formal Advisory Opinionsⁱ

1.1 Written Request Required. The Code of Ethics gives the Board of Ethics the authority to render advisory opinions based on a real or hypothetical set of circumstances. See section 2-804 (j). The request must be in writing and come from a city official, employee, board member, or other individual who is personally involved in a matter requiring interpretation of the ethics code.

1.2 Content of Opinions. The Board shall consider any request for an advisory opinion at its next regularly scheduled board meeting and attempt to issue an opinion with 90 days of the request. Each board opinion shall be in writing and state the facts, issue presented, decision of the board, and reasons for its ruling. A majority vote of the members present at any meeting shall govern the board's decision, provided that at least four members vote. See section 2-804 (f) (5).

1.3 Distribution. Copies of the board's formal advisory opinions shall be sent to the Mayor and City Council President and posted on the Board of Ethics website.

1.4 Reliance on Opinion as Defense to Complaint. Persons who fully disclose all relevant facts may rely on the opinion for guidance, and their compliance with the opinion shall serve in mitigation in any proceeding brought against the individual for violating the ethics code.

Rule 2. Informal Advisory Opinions

2.1 Verbal or Written Request. The Ethics Code gives the ethics officer the duty to advise all city officials and employees about the provisions of the code. Section 2-805 (d). The official or employee may seek advice in writing, over the telephone, or in person.

2.2 Time and Content of Opinions. The ethics officer shall attempt to respond to each request within seven days and no later than fourteen days after receiving the inquiry. The ethics officer may give a written or verbal response. When the ethics officer addresses an issue that the board has not previously considered, the letter should state that it is the ethics officer's informal opinion and not the formal opinion of the board.

2.3 Referral of Issues to Board. The board's chairperson shall appoint a committee on advisory opinions composed of at least three board members with whom the ethics officer can consult as needed about the proper interpretation of the code. The committee shall periodically review the informal advisory opinions that the ethics officer has written to determine whether any of them should be referred to the board for its endorsement. In addition, the ethics officer may bring any inquiry or informal advisory opinion involving a novel, recurring, or unsettled issue before the board for its consideration.

2.4 Public Record. Both formal and informal opinions are subject to the Open Records Act, but only the formal advisory opinions shall be posted on the board's website.

Rule 3. Complaintsⁱⁱ

3.1 Reporting Violations. Any person may report a violation of the Code of Ethics by filing a written complaint with the Ethics Office or Board of Ethics or by communicating with the ethics officer.

3.2 Form of Written Complaint. To be considered, any written complaint should contain the following information:

- (a) the name and address of the person filing the complaint;
- (b) the name and address of the party against whom the complaint is filed;
- (c) a clear and concise statement of facts on which the complaint is based, including dates, times, places, and actions;
- (d) a general reference to the provisions of the Code of Ethics that apply;
- (e) any further information that might support the allegations, including the names, phone numbers, and addresses of other persons with knowledge of the facts and any documents that support the allegations; and
- (f) the sworn verification and signature of the person filing the complaint.

3.3 Anonymous Complaints. The ethics officer may also receive anonymous complaints that are made in good faith and with sufficient specificity to provide salient and investigable facts. A complaint should identify the following:

- (a) the person who is alleged to have committed the violation;
- (b) the facts on which the complaint is based;
- (c) the provisions of the ethics code that have been violated; and
- (d) any evidence that may support the allegations.

3.4 Review for Jurisdiction. Upon receiving a complaint, the ethics officer shall determine whether it alleges a violation of the City of Atlanta's Code of Ethics. If the ethics officer determines that there is no basis for proceeding on a complaint under any code provision within the board's jurisdiction, then the ethics officer shall inform the complaining party and administratively dismiss the complaint without requiring any formal action by the board.

3.5 Preliminary Action on Written Complaints. Upon the ethics officer determining that a written complaint meets the requirements in rule 3.2, the ethics officer shall send a written notice to the subject of the complaint by the next business day and afford an opportunity for the person to respond to the allegations. If the complaint does not contain the necessary information, the ethics officer shall advise the complaining party of the defect and that the complaint will not be considered unless the defect is corrected.

3.6 Notifying Subjects of Anonymous Complaints. Upon the ethics officer determining that the anonymous complaint contains sufficient information of an alleged violation of the ethics code to be reported to the Board of Ethics, the ethics officer shall notify the subject of the complaint in writing and provide an opportunity for the person to file a written response.

3.7 Confidentiality and Public Disclosure. Each complaint shall be deemed a separate pending investigation at the time it is reported. Except for the initial complaint, the board's records in any pending investigation or enforcement proceeding are exempt from disclosure under the Georgia Open Records, as is the identity of confidential sources and records of confidential investigations. See OCGA § 50-18-72.

3.8 Periodic Reports to the Board. The ethics officer shall report periodically to the board on the number of complaints received and their disposition.

Rule 4. Investigations

4.1 Preliminary Investigation of Complaint. The ethics officer shall conduct a preliminary investigation of any complaint, whether written or anonymous, over which the Board of Ethics has exclusive jurisdiction.

4.2 Initiation of Investigations. The ethics officer may initiate an investigation into suspected violations of the Code of Ethics as necessary. The board also has the authority to investigate any alleged violation based on a sworn written complaint by any person, the request of the ethics officer, or a decision by a majority of the board that the matter should be investigated.

4.3 Referral to Other Agencies. If another city employee, department, or agency is investigating the same complaint or similar allegations, the ethics officer may defer any investigation until the other investigation or proceeding is completed. In addition, the ethics officer may refer a complaint for investigation to other departments or agencies that have authority over the matter. Complaints that allege violations of criminal laws shall be reported to the appropriate city, state, or federal law enforcement agencies.

4.4 Ethics Officer's Findings. After conducting a preliminary investigation, the ethics officer shall provide a written report to the board. The analysis shall state the officer's findings and recommendation concerning whether there is probable cause to believe that the Code of Ethics has been violated. "Probable cause" means cause that would induce a reasonably intelligent and prudent person to believe that a person has committed an act constituting a violation of the City's Code of Ethics.

4.5 Notice to the Subject. The ethics officer shall send a written notice and a copy of his or her report to the person charged in the complaint. The notice shall give that person a reasonable opportunity to file a written, sworn statement for the board to consider.

4.6 Probable Cause Finding. Upon receipt of the ethics officer's written report and the subject's written response, the board shall determine whether there is probable cause that the person has violated a provision of the Code of Ethics. If the board determines that probable cause does not exist, it shall dismiss the complaint. The board shall notify the person making the complaint and the person charged in the complaint of its decision.

Rule 5. Enforcement Hearings

5.1 Notice of Hearing. If the board determines that probable cause exists, it shall give notice to the person charged to attend a formal hearing to determine whether there has been a violation of the ethics code. The notice shall state the specific provisions of the ethics code alleged to have been violated.

5.2 Subpoenas. The board may issue subpoenas to compel any person to appear, give sworn testimony, or produce documents or other evidence. Persons who fail to respond to subpoenas may be subject to penalties.

5.3 Open Proceedings. All enforcement proceedings and board deliberations on the evidence shall be open and conducted as required by the Georgia Open Meetings Act. See OCGA §§ 50-14-1 to 50-14-6. Any proceeding held as part of the board's regular monthly meeting shall be televised. The board may contract for the services of a court reporter or a person adept at shorthand reporting or mechanical transcribing devices to take down the proceedings.

5.4 Board's Legal Counsel. The board may request the city attorney or any attorney from that office to advise the board. In the event of a conflict, the board may select another attorney to provide pro bono services to the board.

5.5 Testimony. All testimony shall be under oath, which a board member shall administer to the witnesses. The board's members or its legal counsel shall conduct the questioning of witnesses.

5.6 Rights of Witnesses. Any person who appears before the board shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts in the state. The board shall be fundamentally fair in its administration of evidence and follow the rules of evidence that apply in contested cases under the Georgia Administrative Procedures Act. See OCGA § 50-13-15.

5.7 Rights of the Person Charged. The person charged in the complaint has the right to attend the hearing, make a statement, present and cross-examine witnesses, and be represented by legal counsel or another adviser.

5.8 Rights of the Complainant. The person who filed the complaint has the right to attend the hearing and give testimony.

5.9 Rights of Persons Adversely Affected. Any person whose name is mentioned during a proceeding and who may be adversely affected by it may appear personally before the board or file a written sworn statement for incorporation into the record.

5.10 Deliberations. At the conclusion of the proceedings concerning an alleged violation, the board shall immediately begin public deliberations on the evidence and proceed to determine by a majority vote of the members present whether there has been a violation. In no event shall a decision of the board be voted on by fewer than four members.

5.11 Standard of Evidence. The board's decision shall be governed by the preponderance of the evidence standard.

5.12 Public Disclosure. The board's findings and the record of the proceedings shall be made public as soon as practicable after the board has rendered its decision.

Rule 6. Disposition of Cases

6.1 Disposition. At the end of the enforcement proceedings, the board may dismiss the case if no violation is found. If a violation is found, the board may enter an order to cease

and desist from all violations, order the filing or amending of any deficient disclosure statement, and impose any penalties provided by law.

6.2 Civil Penalties. The board may assess an administrative sanction of not more than \$1,000 or issue a public reprimand for violations. All civil penalties imposed by the board shall be made payable to the City of Atlanta and deposited in the General Fund.

6.3 Recovering Gratuities. The value of any gratuity transferred or received in violation of the Code of Ethics may be recovered from the entity providing it or the recipient. Any funds recovered shall be deposited in the City of Atlanta General Fund.

6.4 Recommendations. The board may recommend disciplinary actions for violations by employees, including oral admonishment, written reprimand, demotion, suspension with pay, suspension without pay, and dismissal. If the violation involves a company doing business with the city, the board may recommend to the Department of Procurement that the contractor be suspended, disqualified, or debarred from contracting or subcontracting with the city.

6.5 Right of Review. The decision of the board shall be final. The proceeding shall be subject to review by writ of certiorari to the Fulton County Superior Court.

6.6 Criminal Proceedings. Nothing in these rules is intended to eliminate the right of any person under the Code of Ethics to institute a proceeding in municipal court as provided in section 2-803.

Rule 7. City Financial Disclosure Proceduresⁱⁱⁱ

7.1 Failure to file. Any person who fails to file a timely and complete financial disclosure statement without reasonable cause may be subject to enforcement action.

7.2 Reasonable cause. Requests for exceptions to the filing requirement based on reasonable cause shall be reviewed on an individual basis and approved by the Ethics Officer, who shall report her finding to the Board.

7.3 Ethics Officer's report. The Ethics Officer shall report annually to the Board of Ethics on all persons required to file a financial disclosure statement under section 2-814 of the Code of Ordinances. The report shall specify those who have complied with the filing requirements, filed a late or incomplete statement, and failed to file any disclosure statement.

7.4 Finding of reasonable grounds. Based on the Ethics Officer's written report, the Board shall determine whether there are reasonable grounds to believe that a person has violated section 2-814.

7.5 Notice to violators. If the Board determines that reasonable grounds exist, it shall give written notice by first class mail to the individual of its finding, cite the specific provisions of the ethics code alleged to have been violated, and specify a hearing date for the person to appear to challenge the board's finding.

7.6 Payment of fine. An individual who fails to timely file may settle the matter without attending the hearing by paying the fine imposed by the ordinance prior to the scheduled hearing.

7.7 Written appearance. In lieu of a personal appearance, an individual may appear before the Board in writing. To be considered, any written response needs to be filed with the Ethics Office by 5 p.m. on the day of the scheduled hearing.

7.8 Time limits on arguments. All hearings of the Board shall be fundamentally fair. Each party shall have no more than ten minutes to present its arguments and evidence. At the chair's discretion, the Board may grant additional time for argument, provided that each side is given the same amount of additional time.

7.9 Order of presentation. The city's representative shall first outline the case and present any evidence concerning the individual's failure to file a timely and complete disclosure statement. The individual or his or her representative shall then respond by presenting relevant facts and argument. Board members may question any person during the hearing. Members of the public may not participate in the proceeding unless the Board chair grants them special permission to participate. All testimony shall be under oath.

7.10 Board decisions. The Board shall base its decisions on the preponderance of the evidence standard.

7.11 Fines for noncompliance. Any person who without reasonable cause fails to file any statement, files a statement after the filing deadline, or files an incomplete statement shall be subject to a fine. The Board may impose a fine of \$50 per business day for every day that a person fails to file after the deadline, with a maximum fine of \$500 for the first offense and \$1,000 for a second or subsequent offense. Persons who file an incomplete statement shall be subject to a fine within the discretion of the Board of Ethics, up to a maximum fine of \$1,000.

7.12 Reporting sanctions to appropriate authorities. The Ethics Officer shall communicate any penalty that the Board imposes on any employee to the head of the department where the violator is employed, any penalty imposed on a board member or hearing officer to the appointing authority, and any penalty imposed on an NPU officer to the Commissioner of Planning and Community Development and the NPU coordinator.

7.13 Other penalties. The Board may impose any other penalty as provided in section 2-807 and Rule 6.4.

7.14 Final decision. The decision of the board shall be final. The proceeding shall be subject to review by writ of certiorari to the Fulton County Superior Court.

ⁱ Rules 1 & 2 adopted November 20, 2003.

ⁱⁱ Rules 3, 4, 5, & 6 adopted December 18, 2003.

ⁱⁱⁱ Rule 7 adopted March 24, 2005.

3/31/2005